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(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(d) These regulations also do not preclude the compromise, suspension, or termination of collection action, where appropriate, under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 et seq., 4 CFR 101.1 et seq.). These regulations do not preclude an employee's requesting a waiver of a salary overpayment (i.e., alleged indebtedness) under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a claim to the General Accounting Office (GAO), or requesting a waiver under statutory provisions pertaining to the particular debt.

(e) The Board's regulations governing debt collection for entities and individuals who are not current or former government employees are contained in 49 CFR part 1018.

[56 FR 32333, July 16, 1991, as amended at 58 FR 7749, Feb. 9, 1993]

§ 1017.2 Definitions.

For the purposes of these regulations, the following definitions will apply:

(a) *Agency*. An executive agency as defined at 5 U.S.C. 105, including the U.S. Postal Service; the U.S. Postal Rate Board; a military department as defined at 5 U.S.C. 102; an agency or court in the Judicial Branch; an agency of the Legislative Branch, including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the Federal Government.

(b) *Creditor agency*. The agency to which the debt is owed.

(c) *Debt*. An amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person.

(d) *Disposable pay*. The amount that remains from an employee's Federal pay after required deductions for social security; Federal, State, or local income taxes; health insurance premiums; retirement contributions; life

insurance premiums; Federal employment taxes; and any other deductions that are required to be withheld by law.

(e) *FCCS*. The Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 et seq.

(f) *Hearing official*. The official responsible for conducting a hearing which is properly and timely requested by the debtor. An Administrative Law Judge shall be responsible for conducting the hearing and the Chief Administrative Law Judge shall determine which judicial official will be assigned the hearing.

(g) *Paying agency*. The agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

(h) *Administrative offset*. The withholding of monies payable by the United States to or held by the United States on behalf of an employee to satisfy a debt owed the United States by that employee.

(i) *Waiver*. A cancellation, forgiveness, or non-recovery of a debt allegedly owed by an employee or former employee to the agency as permitted or required by law.

§ 1017.3 Applicability.

These regulations are to be followed when:

(a) The Board is owed a debt by a current employee;

(b) The Board is owed a debt by an individual currently employed by another Federal agency;

(c) The Board employs an individual who owes a debt to another Federal agency; and

(d) The Board is owed a debt by an employee who separates from Federal Government service. The authority to collect debts owed by former Federal employees is found in the FCCS and 31 U.S.C. 3716.

§ 1017.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice, signed by the debt collection official (Chief, Section of Financial Services), of the debt at least 30 days before administrative offset commences.

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(b) The written notice to current Federal employees shall be hand delivered if at headquarters or sent certified mail, return receipt requested, if located in a field office and shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the FCCS (4 CFR 101.1 et seq.);

(5) The employee's right to inspect, request, and copy Government records relating to the debt (if an employee is unable to physically inspect the Government records, the agency will reproduce copies of the records and may charge for those copies);

(6) If not previously provided, the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement with the agency to establish a schedule for the voluntary repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the creditor agency, and documented in the creditor agency's files (4 CFR 102.2(e));

(7) The right to a hearing conducted by an impartial hearing official concerning the existence or amount of the debt and the repayment schedule, if it was not established by a written agreement between the employee and the creditor agency;

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing of a petition for a hearing (on or before the 15th day following receipt of the written notice) will stay the commencement of collection proceedings, together with instructions on how and where to file a petition;

(10) A statement that a final decision on the hearing (if one is requested) will be issued not later than 60 days after

the filing of the petition requesting the hearing unless the employee requests, and the hearing official grants, a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures and criminal penalties (i.e., for false certification, etc.);

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(c) The written notice to former Federal employees shall be sent certified mail, return receipt requested, and shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by administrative offset against amounts due and payable to the debtor from the Civil Service Retirement and Disability Fund or by use of a collection service to recover the delinquent debt;

(3) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with 4 CFR 101.1 et seq.;

(4) The former employee's rights to inspect, request, and copy Government records relating to the debt (if the former employee is unable to physically inspect the Government records, the agency will reproduce copies of the records and may charge for those copies);

(5) The opportunity to enter into a written agreement with the agency to establish a schedule for the voluntary repayment of the debt;

(6) The right to a hearing conducted by an impartial hearing official concerning the existence or amount of the debt and the repayment schedule, if it

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was not established by a written agreement between the former employee and the creditor agency;

(7) The method and time period for petitioning for a hearing;

(8) A statement that the timely filing of a petition for a hearing (on or before the 15th day following receipt of the written notice) will stay the commencement of collection proceedings, together with instructions on how and where to file a petition;

(9) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the former employee requests, and the hearing official grants, a delay in the proceedings;

(10) A statement that knowingly false or frivolous statements, representations, or evidence may subject the former employee to appropriate criminal penalties (i.e., for false certification, etc.);

(11) A statement of other rights and remedies available to the former employee under statutes or regulations governing the program for which the collection is being made; and

(12) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the former employee.

[56 FR 32333, July 16, 1991, as amended at 64 FR 53267, Oct. 1, 1999]

§ 1017.5 Hearing procedures.

(a) Upon the Administrative Law Judge's determination of an employee's compliance with §§ 1017.4(b)(8) or 1017.4(c)(7) of this part, whichever is applicable, he/she shall set the time, date, and location for the hearing, paying due consideration to convenience to the employee.

(b) All significant matters discussed at the hearing shall be documented, although a verbatim transcript of the hearing shall not be made.

(c) The Administrative Law Judge may exclude any evidence he/she deems irrelevant, immaterial, or unduly repetitious.

(d) Any party to a hearing under these regulations is entitled to present

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his or her case or defense by oral or documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) The Board has the initial burden of proof as to the existence and amount of the debt.

(f) The employee requesting the hearing shall bear the ultimate burden of proof.

(g) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt that reasonable minds could differ as to the existence or amount of the debt.

(h) Where the employee files a petition for a hearing contesting the offset schedule imposed by the Board, the Administrative Law Judge shall take into consideration all relevant factors as to the employee's financial situation in determining whether said offset schedule should be altered.

(i) Any party to a hearing under these regulations is entitled to be accompanied, represented, and advised by counsel, as well as to appear in person or by or with counsel.

(j) The Administrative Law Judge shall issue a final written decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing, as stated in § 1017.4(b)(10) or § 1017.4(c)(9) of this part, whichever is applicable.

§ 1017.6 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the Board's offset schedule if the employee:

(a) Fails to file a petition for a hearing in conformity with the requirements of § 1017.4(b)(8) or § 1017.4(c)(9) of this part, whichever is applicable. However, failure to file within the requisite time period set out in § 1017.4(b)(8) or § 1017.4(c)(9) of this part whichever is applicable, will not result in denial of a hearing or in immediate offset, if the Administrative Law Judge excuses the late filing if the employee can show that the delay was because of circumstances beyond his/her control or because of failure to receive notice of the filing deadline.